

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY MAY 6, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2347

Introduced by Assembly Member Feuer

February 19, 2010

An act to amend, *repeal, and add* Section 2924f of the Civil Code, relating to mortgage defaults.

LEGISLATIVE COUNSEL'S DIGEST

AB 2347, as amended, Feuer. Mortgage defaults: secondary public financing.

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised.

This bill would, *until 2013*, create an exception to the provision governing the exercise of the power of sale by providing that if a property contains 5 or more multifamily units and a public entity, as defined, is a party to a regulatory agreement or recorded deed restriction on the property, the public entity may, by written notice to the trustee, postpone the sale date by no more than 60 days, *as specified*. The bill

would provide that, if multiple public entities are parties to a regulatory agreement or a recorded deed restriction on the property, only one entity may postpone the sale date. The bill would also provide that the power to postpone a sale date pursuant to these provisions may be exercised only once, and that ~~it may only be exercised if the public entity provides written notice using one of 3 specified methods within a specified period prior to the noticed sale date~~ *the period of postponement expires after 180 days have elapsed since filing the notice of default.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924f of the Civil Code is amended to
2 read:
3 2924f. (a) As used in this section and Sections 2924g and
4 2924h, “property” means real property or a leasehold estate therein,
5 and “calendar week” means Monday through Saturday, inclusive.
6 (b) (1) Except as provided in subdivision (c), before any sale
7 of property can be made under the power of sale contained in any
8 deed of trust or mortgage, or any resale resulting from a rescission
9 for a failure of consideration pursuant to subdivision (c) of Section
10 2924h, notice of the sale thereof shall be given by posting a written
11 notice of the time of sale and of the street address and the specific
12 place at the street address where the sale will be held, and
13 describing the property to be sold, at least 20 days before the date
14 of sale in one public place in the city where the property is to be
15 sold, if the property is to be sold in a city, or, if not, then in one
16 public place in the judicial district in which the property is to be
17 sold, and publishing a copy once a week for three consecutive
18 calendar weeks, the first publication to be at least 20 days before
19 the date of sale, in a newspaper of general circulation published
20 in the city in which the property or some part thereof is situated,
21 if any part thereof is situated in a city, if not, then in a newspaper
22 of general circulation published in the judicial district in which
23 the property or some part thereof is situated, or in case no
24 newspaper of general circulation is published in the city or judicial
25 district, as the case may be, in a newspaper of general circulation
26 published in the county in which the property or some part thereof
27 is situated, or in case no newspaper of general circulation is

1 published in the city or judicial district or county, as the case may
2 be, in a newspaper of general circulation published in the county
3 in this state that (A) is contiguous to the county in which the
4 property or some part thereof is situated and (B) has, by comparison
5 with all similarly contiguous counties, the highest population based
6 upon total county population as determined by the most recent
7 federal decennial census published by the Bureau of the Census.
8 A copy of the notice of sale shall also be posted in a conspicuous
9 place on the property to be sold at least 20 days before the date of
10 sale, where possible and where not restricted for any reason. If the
11 property is a single-family residence the posting shall be on a door
12 of the residence, but, if not possible or restricted, then the notice
13 shall be posted in a conspicuous place on the property; however,
14 if access is denied because a common entrance to the property is
15 restricted by a guard gate or similar impediment, the property may
16 be posted at that guard gate or similar impediment to any
17 development community. Additionally, the notice of sale shall
18 conform to the minimum requirements of Section 6043 of the
19 Government Code and be recorded with the county recorder of the
20 county in which the property or some part thereof is situated at
21 least 20 days prior to the date of sale. The notice of sale shall
22 contain the name, street address in this state, which may reflect an
23 agent of the trustee, and either a toll-free telephone number or
24 telephone number in this state of the trustee, and the name of the
25 original trustor, and also shall contain the statement required by
26 paragraph (3) of subdivision (c). In addition to any other
27 description of the property, the notice shall describe the property
28 by giving its street address, if any, or other common designation,
29 if any, and a county assessor's parcel number; but if the property
30 has no street address or other common designation, the notice shall
31 contain a legal description of the property, the name and address
32 of the beneficiary at whose request the sale is to be conducted, and
33 a statement that directions may be obtained pursuant to a written
34 request submitted to the beneficiary within 10 days from the first
35 publication of the notice. Directions shall be deemed reasonably
36 sufficient to locate the property if information as to the location
37 of the property is given by reference to the direction and
38 approximate distance from the nearest crossroads, frontage road,
39 or access road. If a legal description or a county assessor's parcel
40 number and either a street address or another common designation

1 of the property is given, the validity of the notice and the validity
2 of the sale shall not be affected by the fact that the street address,
3 other common designation, name and address of the beneficiary,
4 or the directions obtained therefrom are erroneous or that the street
5 address, other common designation, name and address of the
6 beneficiary, or directions obtained therefrom are omitted. The term
7 “newspaper of general circulation,” as used in this section, has the
8 same meaning as defined in Article 1 (commencing with Section
9 6000) of Chapter 1 of Division 7 of Title 1 of the Government
10 Code.

11 The notice of sale shall contain a statement of the total amount
12 of the unpaid balance of the obligation secured by the property to
13 be sold and reasonably estimated costs, expenses, advances at the
14 time of the initial publication of the notice of sale, and, if
15 republished pursuant to a cancellation of a cash equivalent pursuant
16 to subdivision (d) of Section 2924h, a reference of that fact;
17 provided, that the trustee shall incur no liability for any good faith
18 error in stating the proper amount, including any amount provided
19 in good faith by or on behalf of the beneficiary. An inaccurate
20 statement of this amount shall not affect the validity of any sale
21 to a bona fide purchaser for value, nor shall the failure to post the
22 notice of sale on a door as provided by this subdivision affect the
23 validity of any sale to a bona fide purchaser for value.

24 (2) If the sale of the property is to be a unified sale as provided
25 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
26 9604 of the Commercial Code, the notice of sale shall also contain
27 a description of the personal property or fixtures to be sold. In the
28 case where it is contemplated that all of the personal property or
29 fixtures are to be sold, the description in the notice of the personal
30 property or fixtures shall be sufficient if it is the same as the
31 description of the personal property or fixtures contained in the
32 agreement creating the security interest in or encumbrance on the
33 personal property or fixtures or the filed financing statement
34 relating to the personal property or fixtures. In all other cases, the
35 description in the notice shall be sufficient if it would be a
36 sufficient description of the personal property or fixtures under
37 Section 9108 of the Commercial Code. Inclusion of a reference to
38 or a description of personal property or fixtures in a notice of sale
39 hereunder shall not constitute an election by the secured party to
40 conduct a unified sale pursuant to subparagraph (B) of paragraph

(1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,
(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
YOU NEED AN EXPLANATION OF THE NATURE OF THE
PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee

1 may receive offers during the 10-day period immediately prior to
2 the date of sale and if any offer is accepted in writing by both the
3 trustor or mortgagor and the beneficiary or mortgagee prior to the
4 time set for sale, the sale shall be postponed to a date certain and
5 prior to which the property may be conveyed by the trustor to the
6 person making the offer according to its terms. The offer is
7 revocable until accepted. The performance of the offer, following
8 acceptance, according to its terms, by a conveyance of the property
9 to the offeror, shall operate to terminate any further proceeding
10 under the notice of sale and it shall be deemed revoked.

11 (5) In addition to the trustee fee pursuant to Section 2924c, the
12 trustee or mortgagee pursuant to a deed of trust or mortgage subject
13 to this subdivision shall be entitled to charge an additional fee of
14 fifty dollars (\$50).

15 (6) This subdivision applies only to property on which notices
16 of default were filed on or after the effective date of this
17 subdivision.

18 (d) ~~If Subject to the provisions of subdivision (f), if~~ a property
19 contains five or more multifamily units and a public entity is a
20 party to a regulatory agreement or a recorded deed restriction on
21 the property, the public entity may, by written notice to the trustee,
22 postpone the sale date by no more than 60 days. *The written notice*
23 *shall be provided to the trustee at least 72 hours prior to the*
24 *scheduled sale date, through certified or registered mail,*
25 *guaranteed or overnight delivery service, or personal delivery. In*
26 *its written notice, the public entity shall certify that it has the*
27 *authority to postpone the sale date pursuant to the authority in*
28 *this subdivision. The trustee may rely on this representation.*

29 (1) If multiple public entities are parties to a regulatory
30 agreement or a recorded deed restriction on the property pursuant
31 to this subdivision, only one entity may postpone the sale date.

32 (2) The power to postpone the sale pursuant to this subdivision
33 may be exercised only once.

34 ~~(3) The power to postpone the sale pursuant to this subdivision~~
35 ~~may only be exercised if the public entity provides written notice~~
36 ~~to the trustee by any one of the following methods:~~

37 ~~(A) Certified or registered mail at least eight calendar days prior~~
38 ~~to the noticed sale date.~~

39 ~~(B) Guaranteed or overnight delivery service at least four~~
40 ~~calendar days prior to the noticed sale date.~~

1 ~~(C) Personal delivery at least three calendar days prior to the~~
2 ~~noticed sale date.~~

3 (e) For purposes of this section, the following terms have the
4 following meanings:

5 (1) "Public entity" includes a city, county, city and county,
6 redevelopment agency, or any political subdivision thereof.

7 (2) "Recorded deed restriction" means a deed recorded as an
8 encumbrance against title to the property in the official records of
9 the county in which the property is located, which specifies that
10 all or a portion of the property's usage is restricted to rental to
11 lower income households and identifies the number of units
12 restricted to use as low-income housing.

13 (3) "Regulatory agreement" means an enforceable and verifiable
14 agreement with a public entity that has provided government
15 financing for the acquisition, rehabilitation, construction,
16 development, or operation of a low-income housing property that
17 restricts all or a portion of the property's usage for rental to lower
18 income households. The regulatory agreement shall identify the
19 number of units restricted for use as low-income housing, specify
20 the maximum rent allowed for those units, ~~and be recorded in the~~
21 ~~county in which the property is located. identify the assessor's~~
22 ~~parcel number or provide the legal description of the property,~~
23 ~~and be recorded in the county in which the property is located.~~

24 (f) (1) *A public entity may not exercise the authority granted*
25 *in subdivision (d), if more than 180 days have elapsed since filing*
26 *of the notice of default.*

27 (2) *Any period of postponement, which occurs based on a public*
28 *entity's exercise of the authority granted in subdivision (d), shall*
29 *expire after 180 days have elapsed since the filing of the notice of*
30 *default.*

31 (3) *Nothing in paragraph (1) or (2) shall be deemed to require*
32 *a mortgagee, beneficiary, trustee, or authorized agent to file a*
33 *notice of sale after more than 180 days have elapsed since the*
34 *filing of the notice of default.*

35 (4) *The filing of a case by a trustor or mortgagor under Chapter*
36 *7, 11, 12, or 13 of Title 11 of the United States Code shall not act*
37 *to toll the 180-day limitation provided by paragraphs (1) and (2).*

38 (g) *This section shall remain in effect only until January 1, 2013,*
39 *and as of that date is repealed, unless a later enacted statute, that*
40 *is enacted before January 1, 2013, deletes or extends that date.*

1 *SEC. 2. Section 2924f is added to the Civil Code, to read:*

2 2924f. (a) *As used in this section and Sections 2924g and*
3 2924h, “property” means real property or a leasehold estate
4 therein, and “calendar week” means Monday through Saturday,
5 inclusive.

6 (b) (1) *Except as provided in subdivision (c), before any sale*
7 *of property can be made under the power of sale contained in any*
8 *deed of trust or mortgage, or any resale resulting from a rescission*
9 *for a failure of consideration pursuant to subdivision (c) of Section*
10 2924h, *notice of the sale thereof shall be given by posting a written*
11 *notice of the time of sale and of the street address and the specific*
12 *place at the street address where the sale will be held, and*
13 *describing the property to be sold, at least 20 days before the date*
14 *of sale in one public place in the city where the property is to be*
15 *sold, if the property is to be sold in a city, or, if not, then in one*
16 *public place in the judicial district in which the property is to be*
17 *sold, and publishing a copy once a week for three consecutive*
18 *calendar weeks, the first publication to be at least 20 days before*
19 *the date of sale, in a newspaper of general circulation published*
20 *in the city in which the property or some part thereof is situated,*
21 *if any part thereof is situated in a city, if not, then in a newspaper*
22 *of general circulation published in the judicial district in which*
23 *the property or some part thereof is situated, or in case no*
24 *newspaper of general circulation is published in the city or judicial*
25 *district, as the case may be, in a newspaper of general circulation*
26 *published in the county in which the property or some part thereof*
27 *is situated, or in case no newspaper of general circulation is*
28 *published in the city or judicial district or county, as the case may*
29 *be, in a newspaper of general circulation published in the county*
30 *in this state that (A) is contiguous to the county in which the*
31 *property or some part thereof is situated and (B) has, by*
32 *comparison with all similarly contiguous counties, the highest*
33 *population based upon total county population as determined by*
34 *the most recent federal decennial census published by the Bureau*
35 *of the Census. A copy of the notice of sale shall also be posted in*
36 *a conspicuous place on the property to be sold at least 20 days*
37 *before the date of sale, where possible and where not restricted*
38 *for any reason. If the property is a single-family residence the*
39 *posting shall be on a door of the residence, but, if not possible or*
40 *restricted, then the notice shall be posted in a conspicuous place*

1 on the property; however, if access is denied because a common
2 entrance to the property is restricted by a guard gate or similar
3 impediment, the property may be posted at that guard gate or
4 similar impediment to any development community. Additionally,
5 the notice of sale shall conform to the minimum requirements of
6 Section 6043 of the Government Code and be recorded with the
7 county recorder of the county in which the property or some part
8 thereof is situated at least 20 days prior to the date of sale. The
9 notice of sale shall contain the name, street address in this state,
10 which may reflect an agent of the trustee, and either a toll-free
11 telephone number or telephone number in this state of the trustee,
12 and the name of the original trustor, and also shall contain the
13 statement required by paragraph (3) of subdivision (c). In addition
14 to any other description of the property, the notice shall describe
15 the property by giving its street address, if any, or other common
16 designation, if any, and a county assessor's parcel number; but if
17 the property has no street address or other common designation,
18 the notice shall contain a legal description of the property, the
19 name and address of the beneficiary at whose request the sale is
20 to be conducted, and a statement that directions may be obtained
21 pursuant to a written request submitted to the beneficiary within
22 10 days from the first publication of the notice. Directions shall
23 be deemed reasonably sufficient to locate the property if
24 information as to the location of the property is given by reference
25 to the direction and approximate distance from the nearest
26 crossroads, frontage road, or access road. If a legal description
27 or a county assessor's parcel number and either a street address
28 or another common designation of the property is given, the
29 validity of the notice and the validity of the sale shall not be
30 affected by the fact that the street address, other common
31 designation, name and address of the beneficiary, or the directions
32 obtained therefrom are erroneous or that the street address, other
33 common designation, name and address of the beneficiary, or
34 directions obtained therefrom are omitted. The term "newspaper
35 of general circulation," as used in this section, has the same
36 meaning as defined in Article 1 (commencing with Section 6000)
37 of Chapter 1 of Division 7 of Title 1 of the Government Code.

38 The notice of sale shall contain a statement of the total amount
39 of the unpaid balance of the obligation secured by the property to
40 be sold and reasonably estimated costs, expenses, advances at the

1 time of the initial publication of the notice of sale, and, if
2 republished pursuant to a cancellation of a cash equivalent
3 pursuant to subdivision (d) of Section 2924h, a reference of that
4 fact; provided, that the trustee shall incur no liability for any good
5 faith error in stating the proper amount, including any amount
6 provided in good faith by or on behalf of the beneficiary. An
7 inaccurate statement of this amount shall not affect the validity of
8 any sale to a bona fide purchaser for value, nor shall the failure
9 to post the notice of sale on a door as provided by this subdivision
10 affect the validity of any sale to a bona fide purchaser for value.

11 (2) If the sale of the property is to be a unified sale as provided
12 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
13 9604 of the Commercial Code, the notice of sale shall also contain
14 a description of the personal property or fixtures to be sold. In the
15 case where it is contemplated that all of the personal property or
16 fixtures are to be sold, the description in the notice of the personal
17 property or fixtures shall be sufficient if it is the same as the
18 description of the personal property or fixtures contained in the
19 agreement creating the security interest in or encumbrance on the
20 personal property or fixtures or the filed financing statement
21 relating to the personal property or fixtures. In all other cases,
22 the description in the notice shall be sufficient if it would be a
23 sufficient description of the personal property or fixtures under
24 Section 9108 of the Commercial Code. Inclusion of a reference to
25 or a description of personal property or fixtures in a notice of sale
26 hereunder shall not constitute an election by the secured party to
27 conduct a unified sale pursuant to subparagraph (B) of paragraph
28 (1) of subdivision (a) of Section 9604 of the Commercial Code,
29 shall not obligate the secured party to conduct a unified sale
30 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
31 of Section 9604 of the Commercial Code, and in no way shall
32 render defective or noncomplying either that notice or a sale
33 pursuant to that notice by reason of the fact that the sale includes
34 none or less than all of the personal property or fixtures referred
35 to or described in the notice. This paragraph shall not otherwise
36 affect the obligations or duties of a secured party under the
37 Commercial Code.

38 (c) (1) This subdivision applies only to deeds of trust or
39 mortgages which contain a power of sale and which are secured
40 by real property containing a single-family, owner-occupied

1 residence, where the obligation secured by the deed of trust or
2 mortgage is contained in a contract for goods or services subject
3 to the provisions of the Unruh Act (Chapter 1 (commencing with
4 Section 1801) of Title 2 of Part 4 of Division 3).

5 (2) Except as otherwise expressly set forth in this subdivision,
6 all other provisions of law relating to the exercise of a power of
7 sale shall govern the exercise of a power of sale contained in a
8 deed of trust or mortgage described in paragraph (1).

9 (3) If any default of the obligation secured by a deed of trust or
10 mortgage described in paragraph (1) has not been cured within
11 30 days after the recordation of the notice of default, the trustee
12 or mortgagee shall mail to the trustor or mortgagor, at his or her
13 last known address, a copy of the following statement:

14
15 YOU ARE IN DEFAULT UNDER A

16 _____,
17 (Deed of trust or mortgage)

18 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
19 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
20 YOU NEED AN EXPLANATION OF THE NATURE OF THE
21 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
22 LAWYER.

23
24 (4) All sales of real property pursuant to a power of sale
25 contained in any deed of trust or mortgage described in paragraph
26 (1) shall be held in the county where the residence is located and
27 shall be made to the person making the highest offer. The trustee
28 may receive offers during the 10-day period immediately prior to
29 the date of sale and if any offer is accepted in writing by both the
30 trustor or mortgagor and the beneficiary or mortgagee prior to
31 the time set for sale, the sale shall be postponed to a date certain
32 and prior to which the property may be conveyed by the trustor to
33 the person making the offer according to its terms. The offer is
34 revocable until accepted. The performance of the offer, following
35 acceptance, according to its terms, by a conveyance of the property
36 to the offeror, shall operate to terminate any further proceeding
37 under the notice of sale and it shall be deemed revoked.

38 (5) In addition to the trustee fee pursuant to Section 2924c, the
39 trustee or mortgagee pursuant to a deed of trust or mortgage

- 1 *subject to this subdivision shall be entitled to charge an additional*
2 *fee of fifty dollars (\$50).*
3 *(6) This subdivision applies only to property on which notices*
4 *of default were filed on or after the effective date of this*
5 *subdivision.*
6 *(d) This section shall become operative on January 1, 2013.*